

November 16, 2001

Sent via Facsimile (409-832-7830)

xxxxxxxxxxxxxxxx Esq.
xxxxxxxxxxxxx
Beaumont, TX 77701

Re: xxxxxxxxxxxxxxxxxxxxxx, d/b/a xxxxxxxx xxxxxxxxxxxx

Dear Mr. xxxx:

I am writing to confirm several matters that we discussed on November 14, 2001. First, you indicated to me that you represent xxxxxxxxxxxxxxxxxxxx. You also advised me that Ms. xxxxxxx would assert her fifth amendment privilege before the grand jury. In light of that representation, we, on behalf of the grand jury, excused your client from her appearance before the grand jury scheduled for November 14, 2001.

As I told you during our meeting, Ms. xxxxxxx is a subject in an ongoing federal investigation into various criminal activities, including odometer tampering, motor vehicle title fraud, mail fraud, and money laundering. We have evidence indicating that Ms. xxxxxxx submitted false information to the Texas Department of Transportation in order to obtain a general distinguishing number for XYZ Company from the Motor Vehicle Board. By Ms. xxxxxxx's admission, she obtained this license on behalf of her son xxxx, who could not obtain a license due to his felony conviction.

We further advised you that we have considerable evidence indicating that XYZ Company was used by various members of the xxxxxxxx family to further their odometer fraud scheme. We also advised you that we have evidence indicating that a checking account opened by Ms. Xxxxxxx in the name of XYZ Company may have been used to promote the odometer fraud scheme. We also advised you that documentary evidence establishes that the Texas Department of Transportation issued motor vehicle titles bearing false, low-mileage odometer readings in Ms. Xxxxxxx's name and in the names of other individuals, that those titles were then mailed to Ms. Xxxxxxx's residence, and that those titles were subsequently used in connection with sales of vehicles with rolled-back odometers to unsuspecting retail consumers.

Since our meeting, the grand jury has issued two new subpoenas to your client. By this time, you should be in receipt of those subpoenas. The first subpoena requires Ms. Xxxxxxx to provide fingerprints, handwriting exemplars, and photographs. Production of these items does not implicate Ms. Xxxxxxx's Fifth Amendment privilege. See In re Grand Jury Proceedings (Balliro), 558 F.2d 1177, 1178 n.1 (5th Cir. 1977) (per curiam) ("a grand jury's directive to furnish identifying exemplars such as handwriting, fingerprints, and photographs does not violate any fourth or fifth amendment rights of the witness") (citing United States v. Mara, 410 U.S. 19 (1973), and United States v. Dionisio, 410 U.S. 1 (1973)). During our discussion, you indicated that Ms. Xxxxxxx would be willing to provide these items outside the grand jury. As indicated in the cover letter to that subpoena, you should contact Detective Gary Martin to set up a time for your client to provide these items.

The second grand jury subpoena requires Ms. Xxxxxxx to produce certain records that she is required by law to maintain in connection with her involvement in XYZ Company. As we discussed, the Fifth Amendment "act of production" doctrine is not applicable to required

records. See In re Grand Jury Proceedings (McCoy), 601 F.2d 162, 171 (5th Cir.1979). Further, as I mentioned to you, two circuit courts have explicitly enforced grand jury subpoenas seeking production of the same type of records that are being sought here. See In re Grand Jury Subpoena (Spano), 21 F.3d 226 (8th Cir. 1994); In re Grand Jury Subpoena Duces Tecum (Underhill), 781 F.2d 64 (6th Cir.), cert. denied, 479 U.S. 813 (1986). Should you need any additional information relating to the records being sought, please do not hesitate to contact me.

Should your client wish to speak with us about our ongoing investigation, please let me know. I look forward to hearing from you.

Sincerely yours,

VIA FACSIMILE; ORIGINAL BY U.S. MAIL

Re:

Dear

This responds to your letter asserting a Fifth Amendment privilege on behalf of your client, xxxxxx xxxxxx, in response to subpoenas to sole proprietorships, xxxxxx xxxxxx Auto Sales ("xxxxxx xxxxxx") and xxxxxxxxxxxxxx Auto Sales ("xxxxxxxxxxxxxx"). You are correct that, under United States v. Doe, 465 U.S. 605 (1984), requiring Mr. xxxxxx to produce many of his business records would violate the Fifth Amendment's bar against compelled self-incrimination. The Fifth Amendment, however, does not offer Mr. xxxxxx any protection against the compelled production of odometer statements, dealership registration records, tax records, and other records he is required by law to file or to maintain.

The Third Circuit (like other Circuits) has held that the Fifth Amendment privilege against compelled self-incrimination does not prohibit the compelled production from a sole proprietor of "required records." Matter of Grand Jury Empanelled March 19, 1980, 680 F.2d 327, 336 n. 15 (3d Cir. 1982) ("subpoenaed documents in the [sole proprietor's] possession which are required either to be kept by law or to be disclosed to a public agency should be produced for the grand jury's inspection"). In Doe, the case you cite, the Supreme Court expressly declined to decide whether the Fifth Amendment provided any protection against the compelled production of documents "required by law to be kept or disclosed to a public agency." Doe, 465 U.S. at 607 n.2. Appellate cases since Doe, moreover, have universally held that the "required records" exception is alive and well. In re Grand Jury Subpoena, 21 F.3d 226 (8th Cir. 1994); In re Grand Jury Subpoena, Underhill, 781 F.2d 64, 70 (6th Cir.) (compelling production of odometer statements from sole proprietorships under "required records" exception to Fifth Amendment), cert. denied, 479 U.S. 813 (1986); United States v. Lehman, 887 F.2d 1328, 1332 (7th Cir. 1989); In Re Grand Jury Proceedings (John Doe, M.D.), 801 F.2d 1164, 1169 (9th Cir. 1986); In Re Two Grand Jury Subpoenae Duces Tecum (John Doe, Esq.), 793 F.2d 69, 73 (2d Cir. 1986).

Therefore, although Mr. xxxxxx operated "xxxxxxxxxxxxxx" and "xxxxxx xxxxxx" as sole proprietorships, he can be compelled to produce to the grand jury all documents covered by the subpoena that "are required either to be kept by law or to be disclosed to a public agency." Matter of Grand Jury, supra. These "required records" include:

1. Odometer Statements. Mr. xxxxxx is required by federal law to complete an odometer statement for each vehicle he sells and to maintain a copy of this statement. 49 U.S.C. § 32705(a); 49 C.F.R. 580.8; 49 U.S.C. § 32706(d). See "xxxxxxxxxxxxxx" Subpoena, ¶ 8(a); "xxxxxxxxxxxxxx" Subpoena, ¶ 8(a).

2. Applications for Registration; Certificates of Registration. Mr. xxxxxx was required by New York law to file an application of registration and obtain a certificate of registration for both "xxxxxxxxxxxxxx" and "xxxxxxxxxxxxxx." N.Y. Veh. & Traf. § 415(3) & (5). See "xxxxxxxxxxxxxx" Subpoena, ¶ 4; "xxxxxxxxxxxxxx" Subpoena, ¶ 4.

3. W-2 Forms. Mr. xxxxxx was required by federal law to complete W-2 forms and disclose them to the IRS. Heligman v. United States, 407 F.2d 448, 451-52 (8th Cir.), cert.

denied, 395 U.S. 977 (1969); In Re Dr. Doe, 711 F.2d 1187, 1191 (2d Cir. 1983). See "xxxxxxxxxxxxx" Subpoena, ¶ 3; "xxxxxxxxxxxxxxx" Subpoena, ¶ 3.

With respect to the three categories of documents just identified, Mr. xxxxxx does not have a Fifth Amendment "act of production" privilege. Notwithstanding the fact that he operated "xxxxxxxxxxxxx" and "xxxxxxxxxxxxxxx" as sole proprietorships, therefore, the subpoena lawfully requires the production of these records. Mr. xxxxxx is scheduled to appear, and is required to appear, before the Grand Jury on Friday, March 5, 1993, at 3 p.m. This appearance can only be avoided by either (1) producing no later than March 2 the documents identified above to xxxxxxxxxxxx Investigator, U.S. Department of Transportation, [address] or (2) filing a Motion to Quash. If you do not move to quash the subpoenas, or if Mr. xxxxxx fails to produce the records identified above to Mr. xxxxxx by March 2 or to the Grand Jury on March 5, I will move to have him held in contempt.

Sincerely,